

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JUDGE COOLEY,

2:12-CV-1628 JCM (CWH)

Plaintiff,

V.

BANK OF AMERICA, N.A., et al,

Defendants.

ORDER

Presently before the court is plaintiff Judge Cooley's request for a preliminary injunction. (Doc. # 1-1, ¶ 17).¹ Defendants Bank of America *et al.* have filed an opposition. (Doc. # 7). Also before the court is defendants' motion to dismiss and expunge lis pendens. (Doc. # 6). Plaintiff failed to file an opposition.

19 || I. Preliminary Injunction

20 Federal Rule of Civil Procedure 65 allows a court to issue a preliminary injunction. “An
21 injunction is a matter of equitable discretion” and is “an extraordinary remedy that may only be
22 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def.*
23 *Council, Inc.*, 555 U.S. 7, 22, 32 (2008). To prevail on a motion for a preliminary injunction plaintiff
24 must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury if the
25 preliminary injunction is not granted; (3) that the balance of hardships tips in plaintiff’s favor; and
26 (4) that an injunction is in the public interest. *Id.* at 20.

¹ This case was properly removed from state court on September 17, 2012.

1 This court has previously dismissed a prior action by plaintiff against Countrywide Home
 2 Loans and Recontrust Company, *et al.* for failure to state a claim upon which relief can be granted.
 3 (*See* doc. # 16, 2:09-cv-01554-JCM-RJJ). In that case, plaintiff's alleged causes of action for (1)
 4 unfair lending practices in violation of NRS § 598D, (2) breach of covenant of good faith and fair
 5 dealing, (3) misrepresentation, (4) negligence/negligence per se, (5) breach of fiduciary relationship,
 6 (6) wrongful foreclosure, (7) injunctive relief, and (8) deceptive trade practices. (*See* doc. # 1 in
 7 2:09-cv-01554-JCM-RJJ). In this case, plaintiff brings a complaint alleging (1) quiet title, (2)
 8 aiding/abetting wrongful foreclosure, (3) wrongful foreclosure, (4) unlawful (statutorily defective)
 9 foreclosure in violation of NRS § 107.080, (5) unlawful reliance on falsified documents against
 10 property rights in violation of NRS § 205.372-95, (6) false recordation concerning title to real
 11 property, (7) broken chain of custody (promissory note and assignment rights), (8) cancellation of
 12 instruments, (9) wrongful and parallel foreclosure, (10) injunctive relief, (11) declaratory relief, and
 13 (12) violation of the Fair Housing Act in violation of 42 U.S.C. § 3601 *et. seq.* (Doc. # 1-1).

14 In the previous case, the court ruled that loan securitization does not invalidate a secured loan
 15 and that the presence of Mortgage Electronic Registration System (MERS), as the lender's nominee,
 16 also does not invalidate a lawful foreclosure process after plaintiff's default in 2009. Although the
 17 causes of action here differ from those brought in plaintiff's previous case, plaintiff makes no new
 18 allegations challenging the re-started foreclosure process that evidence a likelihood of success on
 19 the merits. Thus, the court denies plaintiff's request for a preliminary injunction on the basis that
 20 plaintiff is unlikely to succeed on the merits.

21 **II. Motion to Dismiss**

22 "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
 23 as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
 24 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a
 25 complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the
 26 line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S.
 27 at 557). However, where there are well pled factual allegations, the court should assume their
 28

1 veracity and determine if they give rise to relief. *Id.* at 1950.

2 Pursuant to Local Rule 7-2(d), an opposing party's failure to file a timely response to any
 3 motion constitutes the party's consent to the granting of the motion and is proper grounds for
 4 dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the
 5 district court is required to weigh several factors: "(1) the public's interest in expeditious resolution
 6 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
 7 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
 8 sanctions." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d
 9 1421, 1423 (9th Cir. 1986)).

10 In light of the plaintiff's failure to respond and weighing the factors identified in *Ghazali*,
 11 the court finds dismissal appropriate.

12 **III. Expunge Lis Pendens**

13 Plaintiff filed a recorded a lis pendens against the real property on August 22, 2012. (Doc.
 14 # 6, Ex. S). The causes of action against defendants being dismissed, the lis pendens is no longer
 15 necessary. In light of these facts and the plaintiff's failure to respond, the court finds it is appropriate
 16 to expunge the lis pendens.

17 **IV. Conclusion**

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED plaintiff Judge Cooley's
 20 request for a preliminary injunction (doc. # 1-1, ¶ 17) be, and the same hereby is, DENIED.

21 IT IS FURTHER ORDERED that defendants Bank of America *et al.*'s motion to dismiss and
 22 expunge lis pendens (doc. # 6) be, and the same hereby is, GRANTED. The case is hereby dismissed
 23 without prejudice.

24 IT IS FURTHER ORDERED that the lis pendens is canceled, released, and expunged.

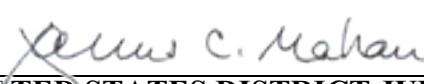
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1 IT IS FURTHER ORDERED that defendants record a properly certified copy of this order
2 in the real property records of Clark County, Nevada within a reasonable amount of time from the
3 date of this order.

4 DATED October 26, 2012.
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8 **UNITED STATES DISTRICT JUDGE**
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